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DEC 04 2007

In re Application of : **OFFICE OF PETITIONS**
William R. Matz et al :
Application No. 10/039,062 : DECISION ON PETITION
Filed: December 31, 2001 :
Attorney Docket No. 60027.101US01 :

This is a decision on the petitions, filed May 22, 2007, (1) requesting under 37 CFR 1.181(a) (no fee) withdrawal of the holding of abandonment in the above-identified application, and (2) revival under the provisions of 37 CFR 1.137(b).

The petition considered under 37 CFR 1.181(a) is **DISMISSED**.

The petition considered under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to reply to the Office action mailed November 4, 2005, which stated that the reply filed on August 17, 2005 was not fully responsive. The November 4, 2005 Office action set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 29, 2006.

Initially, it is noted that the petition indicates that a previous petition to withdraw the holding of abandonment and petition to revive under 37 CFR 1.137(b), along with a petition fee of \$400, were mailed via certificate of mailing on December 22, 2006. However, the correspondence stated to have been mailed on December 22, 2006 has not to date been associated with this application file.

DISCUSSION OF PETITION UNDER 37 CFR 1.181(a)

Ms. Bambi F. Walters, previous counsel of record, indicates in the copy of the December 22, 2006 petition, that the Office action dated November 4, 2005 was not received.

However, a review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. A presumption that an Office action was not properly mailed to or received by the practitioner at the address of record may be overcome by a showing that the Office action was not in fact received. In this regard, the

showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of requirements 2 and 3.

Accordingly, absent the required evidence to establish non-receipt of the Office action of November 4, 2005, the petition requesting withdrawal of the holding of abandonment cannot be granted.

DISCUSSION OF PETITION UNDER 37 CFR 1.137(b)

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1,500, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Office action of November 4, 2005 is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This application is being referred to Technology Center AU 2153 for appropriate action in the normal course of business on the reply received May 22, 2007.



Frances Hicks
Petitions Examiner
Office of Petitions